

### **REMARKS**

The applicant respectfully requests reconsideration in view of the amendment and the following remarks. The applicant has amended claim 10 to overcome the 35 U.S.C. 112

Claims 1-13 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-6, 8-13, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,436,041 (Murschall et al). Claims 1-3, 6-11, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,482,780 (Wilkie et al) as evidenced by Cheremisinoff (Handbook of Engineering Polymeric Materials). The applicant respectfully traverses these rejections.

### **Election**

The applicant affirm their election of Group I, claims 1-13 and 15 with traverse. **The applicant believes that the restriction is not proper since this is a 371 application and there was not an issue of lack of unity in the PCT application. All the claims were examined.** For this reason alone, since there was not a lack of unity the restriction requirement should be withdrawn.

Applicant respectfully further traverses the Restriction requirement because the U.S. Patent and Trademark Office has not carried forward its burden of proof to establish distinctness.

In particular, MPEP § 803 states:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

The claims of the present invention would appear to be part of an overlapping search area as recognized by the PCT examiner.

Accordingly, Applicants respectfully traverse the outstanding Election requirement on the grounds that a search and examination of the entire application would not place a *serious* burden on the Examiner.

For the above reasons, the applicant respectfully requests that this restriction requirement be withdrawn.

### **Rejections under 35 U.S.C. 112**

Claims 1-13 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant has amended claim 10 as requested by the Examiner.

The Examiner does not like the use of the word "cold". Cold seal is an adhesive coating on laminates, or plastic films that is pressure sensitive and allows packages to be sealed with minimal or no heat but only pressure. This is a definition which can also be found in various glossaries and papers relating to cold seal adhesives. For example, the applicant has enclosed an article from Dr. Smith entitled "Cold Seal Adhesives" in a paper entitled Power @ Work.

Also the specification itself gives a clear definition of what a cold seal adhesive is. This definition is in line with such common understanding of a person of ordinary skill in the art.

Page 1, § 0002 of the applicant's published specification states:

*Sealing methods are used for manufacturing a package from these films, in which the outer layers of the films are **stuck together using pressure and elevated temperature (hot sealing)**. For packaging temperature-sensitive products, cold*

*sealing layers are used, which stick together at room temperature under only pressure. Cold sealing adhesives of this type are based on natural or synthetic latex compositions, which are applied to an outer film surface. (emphasis added)*

Page 3, § 0036 of the applicant's published specification states:

*According to the present invention, the film is provided with cold sealing adhesive on the surface of the first cover layer. Cold sealing adhesive layers differ in principle from hot sealing layers in that the sealing is performed at room temperature only through the application of pressure. The packaged product therefore does not experience any temperature stress. The cold sealing adhesive does not require activation by water, solvent, or heat Cold sealing adhesives are known per se in the related art and are based, for example. (emphasis added)*

For the above reasons, cold seal adhesive is well known to one of ordinary skill in the art. Therefore, this rejection should be withdrawn.

#### **Rejections under 35 U.S.C. 102(b)**

Claims 1-6, 8-13, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,436,041 (Murschall et al). Claims 1-3, 6-11, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,482,780 (Wilkie et al) as evidenced by Cheremisinoff (Handbook of Engineering Polymeric Materials).

The Examiner gives no patentable weight to the "cold seal adhesive" feature since the Examiner believes this term does not distinguish from heat sealable films. This is incorrect. Cold seal is an adhesive coating on laminates, or plastic films that is pressure sensitive and allows packages to be sealed with minimal or no heat but only pressure. As stated above, the published specification itself gives a clear definition of what a cold seal adhesive is (see page 1; § 0002 and page 3; § 0036 of the applicant's published specification.).

Therefore, there cannot be any doubt that cold seal adhesive is clearly distinguished from heat sealing such as disclosed by Murschall. Even though one can apply lower temperatures than usual for the heat sealing of the Murschall film these temperatures are still without a doubt temperatures well above room temperatures as required for cold sealing. The table in Murschall at the bottom of cols. 15 and 16 to the top of cols. 17 and 18 shows that the low sealing temperature according to Murschall is in the order of 88°C which is well and way above room temperature.

Accordingly, Murschall does not disclose a film with a cold seal adhesive but only a heat sealable film with a coextruded heat sealable layer which heat seal initiation temperature is a little lower than standard heat seal initiation temperatures, but by no means this layer can be considered to be a cold seal adhesive.

There is nothing in Murschall which suggest applying a cold seal adhesive to such film, as the sealability is provided already by the co-extruded heat seal layer. Murschall is not related by any means to films for cold seal adhesive coating or to cold seal adhesive as such.

The Examiner alleges that Wilkie discloses to add hydrocarbon resin to his film. Again this is not correct. A hydrocarbon resin is different from polymers. This is explained in detail in the applicant's published specification at page 2, paragraph nos. [0014] and [0015] which state:

*It is essential to the present invention that the base layer contains a **hydrocarbon resin** (also referred to as a "hard resin" In English), preferably in a quantity of 5 to 20 weight-percent, particularly 8 to 15 weight-percent, in relation to the weight of the base layer.*

*[0015] In principle, synthetic resins or resins of natural origin, which are generally partially or completely hydrogenated, come into consideration as **hydrocarbon resins**. The softening point of the resins is generally above 80°C. (measured according to DIN 1995-U4 and/or ASTM E-28), such resins having a softening point of 100 to 180° C., particularly 110 to 160°C., being preferred. In general the **hydrocarbon resins** have a mean molecular weight Mn between 500 and 2500 (Mw 500 to 3000) and therefore differ from long-chain high*

***molecular weight polymers, whose Mw (weight mean) is generally in the magnitude of 10,000 to multiples of 100,000. In addition, resins are amorphous substances which are glass-like and brittle at room temperature, because of which they are also referred to as hard resins. Because of these characteristics, resins of polymers, particularly of propylene polymers, polyethylenes, and similar high molecular weight substances, are different. For the purposes of the present invention, resins having a Mw of 600 to 1200 and a softening point of 100 to 140° C are particularly preferred. (emphasis added)***

Therefore, the hard resins are distinguished from polymers in that they have a lower molecular weight and are amorphous brittle substances versus the crystalline or semicrystalline thermoplastic polymers. Also in relation to the term hydrocarbon resins the applicant has identify many patents defining such a hydrocarbon resin as an essential component which is different from a polymer (see enclosure). Wilkie does not disclose any hydrocarbon resin. The Examiner refers to col. 4, lines 1 - 2, but clearly all products mentioned there are standard thermoplastic polymers. Wilkie states at col. 3, line 64- col. 4 line 15:

#### *The Core Layer*

*The core layer of the films of the present invention is predominantly isotactic polypropylene homopolymer. It can include small quantities, e.g. less than about 10%, e.g., 2 to 8% of other polymers such as alpha-olefin polymers having about 2 to 4 carbon atoms, e.g. ethylene-propylene random copolymer, ethylene-propylene block copolymer and high density polyethylene. The quantity of high density polyethylene is generally limited to less than 5% such as about 0.5 to 4.5% by weight. Preferably not more than about 4% of such other polymers are included in the core so as not to adversely effect the stiffness, clarity and other physical properties of the oriented polypropylene. Optionally, small quantities of migratory additives can be included in the core layer such as amides, including erucamide, behenamide or glycerol monostearate, or amines. Other inorganics such as, calcium stearate, or silicone oil can also be added to the core layer, but these are often more useful when used within the release skin layer. (emphasis added)*

None of the ingredients of the core layers disclosed by Wilkie are hydrocarbon resins.

The object of the instant invention was to provide a film with good anchoring of the cold seal adhesive on the film surface and good seal strength of the cold seal adhesive versus itself (see paragraph no. [0009] of the published specification).

Only Wilkie relates to films for cold seal adhesive, whereas Murschull is very remote compared to the applicant's claimed invention.

As explained above the applicant's invention is distinguished from Wilkie in that the applicant modifies the substrate film by adding a hydrocarbon resin to the base layer (see the applicant's claim 1). The examples and the comparative examples demonstrate that such modification improves the anchoring of the cold seal adhesive and the sealing strength as well (see Table summarizing the results at page 5 of the published specification). Wilkie does not render obvious to modify the substrate film with such hydrocarbon resin in order to improve anchoring and seal strength.

It was surprising that the hard resin in the base layer helps the anchoring of the cold seal adhesive on the surface layer, as the adhesive is not even in physical contact with the hard resin modified base layer. The understanding in the prior art was that the anchoring of a cold seal adhesive depends on the structure of the surface whereon the adhesive is applied. It was believed that a certain surface roughness helps a good anchoring the seal strength was considered to be an inherent property of the adhesive and therefore depends on nothing but the choice of the adhesive. The belief was that the seal strength cannot be affected by the substrate film.

There is nothing in Wilkie or Murschall which suggests that a hard resin in a base layer could affect the surface of the substrate film in such a manner that the anchoring of the cold seal adhesive might be improved. Hard resins were known to migrate into the amorphous regions of

the semi-crystalline polypropylene of the base layer. From this knowledge it cannot be derived that the hard resin can affect the anchoring of the adhesive on the cover layer and its seal strength. Therefore neither Murschall nor Wilkie can render the invention obvious. For the above reasons, these rejections should be withdrawn.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 05581-00141-US from which the undersigned is authorized to draw.

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Respectfully submitted,

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Enclosure: paper from Dr. Smith entitled "Cold Seal Adhesives"

paper identify many patents defining a hydrocarbon